IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9055 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVSHIBHAI ZAVERBHAI MAVANI

Versus

GORDHANBHAI VALLABHBHAI KHANESA

Appearance:

1. Special Civil Application No. 9055 of 2004

MR HARSHAD K PATEL for Petitioner No. 1-5

MR SK PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/03/2005

ORAL JUDGEMENT

1.0 The petitioners herein have challenged the order dated 16/07/2004 passed by the learned 2nd Joint Civil Judge (J.D.), Amreli below exh.26 in Regular Civil Suit No.45 of 2004, whereby the learned Judge had rejected the application perferred by the petitioners for appointing Court Commissioner under Order 26 Rule 9 of the Civil

Procedure Code.

2.0 The brief facts of the case are as under;
In the year 1971, one Vallabhbhai Govindbhai Khanesa, father of the respondent herein, purchased a land situated at Village Pipallag, District Amreli. In the year 1977, the said land was bifurcated into four plots, numbering - Plots No.45, 46, 47 and 48. The said Plots was divided amongst Vallabhbhai Govindbhai Khanesa and Haribhai Govindbhai Khanesa, the brother of Vallabhbhai Govindbhai Khanesa. However, it was not decided as to which Plots belonged to whom.

2.1 In the year 1978-79, the petitioners herein purchased two plots viz. Plots No.45 & 46 from the father of the respondent herein i.e. Vallabhbhai Govindbhai Khanesa. Sale transaction was registered in the presence of two witnesses. Though, the sale transaction was entered in respect of Plots No.45 & 46 by the father of the respondent herein with the petitioners, the petitioners were given possession of Plots No.47 & 48.

2.2 On 13/01/2004 the respondent herein executed a registered document before the Sub-Registrar, Amreli declaring that Plots No.45 & 46 were of the ownership of Haribhai Govindbhai Khanesa and that the other two Plots viz. Plots No.47 & 48 were of the ownership of the present respondent. In view of the above, the respondent herein filed Regular Civil Suit No.45 of 2004 in the Court of the learned 2nd Joint Civil Judge (J.D.), Amreli against the petitioners herein for permanent injunction. Along with the said suit, the respondent had also filed exh.5 application for interim injunction.

2.3 In the said suit, the petitioners moved an application below exh.26 for the appointment of Commissioner to evidence the fact that the petitioners were in peaceful and lawful possession of the said plots viz. Plots No.47 & 48 since 1978-79. The learned Judge by order dated 16/07/2004 passed in the said application refused to grant the prayer of the petitioners for the appointment of a Court Commissioner. Hence, this petition.

3.0 I have heard learned counsel for the parties and have perused the relevant documents on record. The trial Court while rejecting exh.26 application has rightly observed that looking to the nature of dispute between the parties and in view of the provision of Order 26 Rule 9 of the Civil Procedure Code, the dispute between the

parties cannot be resolved by the appointment of a Court Commissioner in the matter.

4.0 The application below exh.26 was moved on 09/07/2004 and written statement was filed on 22/06/2004. Hence, it is clear that the said application was preferred at a belated stage and only with a view to prolong the hearing of exh.5 application in the said suit. I am in complete agreement with the reasonings given by the trial Court while rejecting the said application exh.26. Hence, no interference is called for by this Court in this petition.

5.0 In above view of the matter, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated. However, it shall be open for the petitioners to produce independent evidence in order to establish their case and for that purpose there is no necessity for appointing Court Commissioner.

(K. S. Jhaveri, J.)

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